

From: Gabrielle Stebbins | REV [gabrielle@revermont.org]
Sent: Thursday, April 30, 2015 1:08 PM
To: Springer, Darren; Andrew Savage
Subject: Language
Attachments: GENERAL-#308682-v1-H_40 _amendment _solar _setbacks _screening_April 30v2.rtf; Explanation of changes April 30_2015_setbacks and screening.docx

Please see two attachments.
Thank you.

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H. 40 Senator _____ moves that the report of the Committee on Natural Resources and Energy be amended as follows:

First: In the fourteenth instance of amendment, in Sec. 14b (Joint Energy Committee; recommendation), in subsection (a), by striking out subdivisions (1) through (3) and inserting in lieu thereof new subdivisions (1) and (2) to read:

(1) what revisions, if any, the Committee recommends that the General Assembly enact with respect to the statutes applicable to energy efficiency entities appointed and charges imposed under 30 V.S.A. § 209(d); and

(2) what legislation, if any, the Committee recommends that the General Assembly enact to clarify or alter the relationship of energy efficiency entities and charges under 30 V.S.A. § 209(d) with the energy transformation category adopted under Sec. 3 of this act, 30 V.S.A. § 8005(a).

Second: In the seventeenth instance of amendment, by striking out Secs. 26a and 26b and inserting in lieu thereof new Secs. 26a, 26b, 26c, and 26d to read: Sec. 26a. 30 V.S.A. § 248(a)(4)(F) is added to read:

(F) The legislative body ~~and the planning commission~~ for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection ~~and may provide evidence and recommendations concerning any findings to be made on orderly development under subdivision (b)(1) and aesthetics under subdivision (b)(5). Nothing in this subsection shall prohibit the municipal legislative body or planning commission from seeking party status on other subdivision (b) criteria under applicable Board rules.~~

Sec. 26b. 30 V.S.A. § 248(s) is added read:

(s) ~~(1)~~ This subsection sets minimum setback requirements that shall apply to in-state ground-mounted solar electric generation facilities ~~with plant capacities greater than 15 kW~~ approved under this

section, provided, however, that the setbacks for a given facility shall not be more restrictive than municipal setbacks applied to other land development in the same district under this chapter or 10 V.S.A. chapter 151.

(1) The minimum setback from a State or municipal highway ~~and from each property boundary~~ shall be:

(A) 100 feet for a facility with a plant capacity exceeding 150 kW; and

(B) 40 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(2) The minimum setback from each property boundary shall be:

(A) 50 feet for a facility with a plant capacity exceeding 150 kW; and

(B) 25 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

~~This subsection does not require a setback for a facility with a plant capacity equal to or less than 15 kW.~~

(3) On review of an application, the Board ~~may allow alternative setbacks if no objection or recommendation to the contrary is filed by the legislative body or planning commission for the municipality in which the facility is to be located. and may require a larger setback than this subsection requires~~if it finds that the setback is a reasonably available mitigating step that is necessary in order to harmonize the facility with its surroundings;

(4) In this subsection:

(A) “kW” and “plant capacity” shall have the same meaning as in section 8002 of this title.

(B) “Setback” means the shortest distance between the ~~edge of the closest solar panel and the centerline of the travelled portion the edge~~ of a highway right-of-way or property boundary.

~~Sec. 26c. 24 V.S.A. § 4414(15) is added to read:~~

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(2) With respect to in-state ground-mounted solar electric generation facilities with plant capacities greater than 15 kW, the Board shall give due consideration to any recommendation by the municipality in which the facility is located regarding aesthetic mitigation measures that are reasonably available to harmonize the facility with its surroundings, including but not limited to landscaping, vegetation, fencing and topographic features. Any such aesthetic mitigation measures shall not prohibit or have the effect of prohibiting the installation of such a facility and shall not have the effect of interfering with its intended functional use.

Second: In the eighteenth instance of amendment, in Sec. 28 (effective dates), by striking out subsection (c) and inserting in lieu thereof a new subsection (c) to read: (c) Secs. 26a (municipal party status), 26b (setbacks), 26c, (solar screening), and 26d (report) shall take effect on ~~passage~~ July 15, 2015 and Notwithstanding 1 V.S.A. §§ 213 and 214, Sec. 26a shall apply to each application for a certificate of public for solar electric generation facility that is ~~pending as of~~ filed on or after the section's effective date.

Suggested changes:

- Bottom of page 1 (F):
 - This language change makes it clear that there is one entity that will represent a municipality before the PSB. It will be very difficult if there is a planning commission asking for one thing and a Selectboard asking for another.
 - The added redline language clarifies what a municipality can do – provide evidence, make recommendations, etc. It also clarifies that the municipality area of expertise is focused on “orderly development” (b)(1) and “aesthetics” (b)(5). The other (b) criteria relate to ANR expertise, Public Service Dept expertise, State Historic Preservation Office expertise. The last sentence clarifies that any municipality can choose to weigh in on *all* criteria if they want to through filing an intervener request (this is current law).
- Page 2, (s):
 - This change clarifies that setbacks should not be MORE restrictive than setbacks applied to similar development types.
 - QUESTION: What happens if there are no setbacks in the district?
- Page 2, (1) and (2):
 - Slightly tweaks setbacks to the following:
 - From a highway:
 - 100 ft for a system larger than 150 kW
 - 40 ft for a system 15 kW – 150 kW
 - From property boundary:
 - 50 feet for a system larger than 150 kW
 - 25 ft for a system 15 kW – 150 kW
- Page 2, (3):
 - This change allows for a town to have alternative setbacks if they so choose but the setbacks must harmonize with the surroundings.
- Page 2, (B):
 - This language clarifies what exactly is measured for the setback. The current language is broad and could be imply fences, utility equipment, poles, etc. Also, the current language regarding the highway is likely to raise legal uncertainties regarding Rights of Way. Hence, the suggested clarification changes.
- Page 3, (15):
 - The current screening language raises several issues that will only cost money for all parties.? The alternative proposed screening language gives towns the weight before the Board to have their setback and aesthetic mitigation measures direct the Board’s consideration.
 - CAUTION – screening requirements cannot be based on construction costs otherwise this could kill solar. Screening should be based off harmonization with surroundings to address the aesthetic considerations.
- Page 3 – passage date: set for July 15th and does not apply to projects that have already filed their applications and are pending, or have notified everyone with 45 days. It is very problematic if a project has already filed or already notified and then has new law impact them.